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July 23, 2021

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**Re: Glen Riddle Station, L.P. v. Sunoco Pipeline L.P.; Docket No. C-2020-3023129**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Pennsylvania Public Utility Commission is Complainant's Brief in Opposition to Respondent's Motion *In Limine* On Unresolved Hearing Objections, in the above-referenced matter. If you have any questions with regard to this filing, please do not hesitate to contact me. Thank you.

Respectfully,

Samuel W. Cortes

SWC:jcc  
Enclosure

cc: Per Certificate of Service

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**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLEN RIDDLE STATION, L.P.,	:	DOCKET NO. C-2020-3023129
Complainant,	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent.	:	

**COMPLAINANT’S BRIEF IN OPPOSITION TO RESPONDENT’S  
MOTION *IN LIMINE* ON UNRESOLVED HEARING OBJECTIONS**

Complainant, Glen Riddle Station, L.P. (“GRS”), submits this Brief in Opposition to Respondent’s Motion *In Limine* On Unresolved Hearing Objections (the “Motion”).

During the cross-examination of GRS’s witness, Stephen Iacobucci (“Mr. Iacobucci”), on the second hearing day, Respondent, Sunoco Pipeline L.P. (“Sunoco”) submitted written “objections” to certain portions of Mr. Iacobucci’s testimony and exhibits introduced during Mr. Iacobucci’s direct and surrebuttal testimonies. Notably, Sunoco waited until the middle of the hearing to submit its written objections even though GRS served Sunoco with Mr. Iacobucci’s direct testimony and surrebuttal testimony 119 days and 28 days earlier, respectively.<sup>1</sup>

Sunoco’s objections ignore the Administrative Agency Law, which provides that “Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all evidence of reasonably probative value may be received.” 2 Pa. C.S.A. § 505. “This statutory maxim has been correctly interpreted to mandate a relaxation of the strict rules of evidence in Agency hearings.” A.Y. v. Com., Dept. of Public Welfare, Allegheny County Children

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<sup>1</sup> Weeks before the hearing on June 21, 2021, Sunoco filed a Motion *in Limine* on GRS’s surrebuttal testimony and could have raised these issues then, but chose not to, presumably in furtherance of its litigation by ambush strategy, which is more fully addressed in the Motion *in Limine* filed by GRS on July 12, 2021.

& Youth Services, 641 A.2d 1148, 1150 (Pa. 1994); see also In re S.H., 96 A.3d 448, 461 (Pa. Commw. Ct. 2014) (holding that “the rules of evidence are relaxed in administrative proceedings... .”); Pa. Game Commission v. State Civil Service Commission (Wheeland), 219 A.3d 1257, 1266 (Pa. Commw. Ct. 2019) (“Administrative hearings are not subject to the finer points of the rules of evidence that govern judicial hearings.”).

With respect to proceedings before the Commission, “presiding officers are not bound by the rules of evidence in Commission proceedings and may assign varying degrees of weight to hearsay evidence if admitted.” Commw. of Pa. v. Respond Power LLC, No. C-2014-2427659, 2015 WL 1291566, at \*1 (Pa. P.U.C. Mar. 6, 2015). Additionally, “the Commission’s regulations provide for the admissibility of all ‘relevant and material evidence... .’” UGI Utilities, Inc.-Gas Div. v. Pa. Public Utilities Commission, 863 A.2d 144, 151 n. 9 (Pa. Commw. Ct. 2004) (citing 52 Pa. Code § 5.401(a)). The presiding officer is vested with broad discretion to control the receipt of evidence and may “disregard an error or defect of procedure which does not affect the substantive rights of the parties” at any stage of the proceeding to “secure the just, speedy and inexpensive determination of every action.” See 52 Pa. Code § 5.403; 52 Pa. Code § 1.2; see also Stephen J. Noll v. Columbia Gas of Pa., Inc., No. C-2013-2353658, 2014 WL 316868, at \*6 (Pa. P.U.C. Jan. 23, 2014) (affirming ALJ’s decision overruling complainant’s objections to exhibits when complainant had the opportunity to cross-examine witnesses about the exhibits at the hearing but did not do so and, instead, raised general objections to the exhibits).

Here, the ALJ should overrule Sunoco’s objections in their entirety and consider and weigh the evidence presented by the parties, consistent with the Commission’s regulations. Even if, however, the Pennsylvania Rules of Evidence applied strictly to the hearing, all of the testimony and exhibits to which Sunoco now objects is admissible. Specifically, with respect to Sunoco’s

objections to Mr. Iacobucci's testimony, Mr. Iacobucci did not offer improper lay opinions or legal conclusions, but instead testified with respect to his own personal observations, reasonable inferences, and lay opinions drawn from those observations and experiences. Further, with respect to Sunoco's objections to certain exhibits and related testimony, (1) Sunoco waived its objections by introducing the exhibits during its rebuttal, (2) the exhibits and related testimony are not hearsay and are otherwise admissible under the business records and party opponent admission exceptions to the hearsay rule, (3) the exhibits are all relevant, and (4) Mr. Iacobucci properly authenticated the exhibits.

**I. Sunoco's Objections To Mr. Iacobucci's Testimony Are Baseless.**

The ALJ should overrule Sunoco's objections based on "lay witness opinions" and "legal conclusions" because Mr. Iacobucci testified as to his own personal observations and experiences and to reasonable inferences and lay opinions drawn from his experiences.

"Generally, lay witnesses may express personal opinions related to their observations on a range of subject areas based on their personal experiences that are helpful to the factfinder." Commw. v. Berry, 172 A.3d 1, 4 (Pa. Super. Ct. 2014). The mere fact that lay witness testimony is based on a specialized or technical subject does not make it inadmissible. See Woolford v. Equitable Life Assur. Soc. of U. S., 27 A.2d 411, 413 (Pa. Super. Ct. 1942) ("A lay witness may testify as to certain matters involving health, the apparent physical condition of a person, and as to obvious symptoms."); Gibson v. W.C.A.B. (Armco Stainless & Alloy Prod.), 861 A.2d 938, 948 (Pa. 2004). Lay opinion testimony on technical information is admissible when the proponent of such testimony "shows that the testimony is based on sufficient personal experience or the specialized knowledge of the witness." Id.

Additionally, “a [party] need not produce scientific evidence to prove the existence of a hazard.” Glatfelter v. W.C.A.B. (Henry), No. 48 C.D. 2013, 2013 WL 3941991, at \*3 (Pa. Commw. Ct. July 30, 2013). Rather, “the testimony of a lay witness possessing first-hand knowledge and observation of a hazard . . . alone can prove the existence of and exposure to such a hazard.” Id. at \*3 (explaining that such knowledge can come through formal education or practical experience).

The cases cited within Sunoco’s brief are consistent with the holding that lay witnesses may offer opinion testimony on hazards or safety issues if the opinions are based on the witness’s personal knowledge or experiences. See Gibson, 861 A.2d at 948 (“Rule 701 contemplates admission of lay opinions rationally based on personal knowledge that are helpful to the trier of fact.”); Lamagna v. Pa. Elec. Co., No. C-2017-2608014, 2018 WL 6124353, at \*20 (Pa. P.U.C. Oct. 30, 2018) (concluding that a lay witness could not testify on health and safety issues outside of her direct personal knowledge).

In his testimony, Mr. Iacobucci discussed the unsafe and hazardous property conditions caused by Sunoco’s continued work on the property, which he personally observed. [Iacobucci Direct, p. 2 ln. 13 - p. 3 ln. 3]. Mr. Iacobucci based his testimony on having personally observed the impact Sunoco’s work had on the property, along with his experience in property maintenance and management. [Id. at p. 1 ln. 13-17; p. 6 ln. 4-7; p. 8, ln. 2-23; p. 10, ln. 7-9, 21-22; p. 12, ln. 16-17]. Accordingly, Mr. Iacobucci’s testimony is admissible because he based it on his own personal knowledge and experiences. Gibson, 580 Pa. at 481. Furthermore, Mr. Iacobucci’s testimony is supported by expert testimony, including that of Jeffrey A. Davis, M.D., and Jay Etzel, P.E. [See Davis Surrebuttal, p. 3 ln. 83-91; Etzel Surrebuttal, p. 5, ln.122-129; p. 6, ln. 134-136, 138-142; p. 7, ln. 159-160].

Additionally, Mr. Iacobucci's limited references to the law in his testimony provided context for his personal observations – they did not offer legal conclusions.<sup>2</sup> The ALJ, as the factfinder here, may disregard Mr. Iacobucci's citation to legal authority if the ALJ finds it unhelpful, but should consider the facts to which Mr. Iacobucci testifies in any event. Accordingly, the ALJ should overrule Sunoco's objections based on "lay witness opinion testimony" and "legal conclusions."

## **II. Sunoco Waived Its Objections To GRS's Exhibits And Sunoco's Objections Are Otherwise Baseless.**

The ALJ should overrule Sunoco's objections to the exhibits introduced during Mr. Iacobucci's testimony because (A) Sunoco waived its objections by introducing the same exhibits during its rebuttal testimony and cross-examination, (B) the exhibits and related testimony are not hearsay and otherwise qualify for admission under the business records exception to the rule against hearsay, (C) the exhibits are all relevant, and (D) Mr. Iacobucci properly authenticated the exhibits.

### **A. Sunoco Waived Its Objections By Introducing The Same Exhibits To Which It Now Objects During Its Rebuttal.**

With respect to Exhibits GRS-5, GRS-6, GRS-7, GRS-33, GRS-102, GRS-103, GRS-104, GRS-160, and GRS-161 (the "Waived Exhibits") and Mr. Iacobucci's related testimony, Sunoco waived any objections by introducing the Waived Exhibits during its rebuttal.

It is a "well-established commonsense principle" that a party introducing evidence cannot later object to the introduction of the evidence. Ohler v. U.S., 529 U.S. 753, 755 (2000) (holding,

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<sup>2</sup> In contrast, the rebuttal testimony of Sunoco's witness Mr. Joseph McGinn consists almost entirely of legal conclusions. [McGinn Rebuttal, p. 5 ln. 10 – p. 7 ln. 2]. Specifically, Mr. McGinn offers only legal conclusions regarding federal Pipeline and Hazardous Materials Safety Administration regulations without any meaningful context. [Id.]. Sunoco's inconsistent approach to this issue is irreconcilable and demonstrative of its bad faith intent here.

“a party introducing evidence cannot complaint on appeal that the evidence was erroneously admitted.”); see also Commw. v. Heaton, 472 A.2d 1068, 1070 (Pa. 1984) (“Generally speaking, a party cannot assert error in the admission of evidence where he, himself, introduced the evidence.”) (citing Kolb v. Hess, 323 A.2d 217, 221 (Pa. Super. Ct. 1974) (holding, appellant waived objection to testimony when “it was appellant’s attorney who elicited such testimony on direct examination”)); Commw. v. Swinson, 626 A.2d 627, 632 - 633 (Pa. Super. Ct. 1993) (recognizing, where one party “opens the door,” the other party may use hearsay statement to dispel unfair inference).

Here, Sunoco offered the Waived Exhibits into evidence during its own rebuttal testimony or otherwise “opened the door” to the Waived Exhibits. [See Chart addressing exhibits with citations to the record, attached as Exhibit A]. By doing so, Sunoco waived any objections to those exhibits and any related testimony offered by Mr. Iacobucci. See Ohler, 529 U.S. at 755.

**B. The Remaining Exhibits And Related Testimony Are Not Hearsay And Otherwise Constitute Business Records.**

With respect to the remaining exhibits and related testimony, Sunoco’s hearsay objections are meritless given that “hearsay evidence may generally be received and considered during an administrative proceeding.” D’Alessandro v. Pa. State Police, 937 A.2d 404, 411-12 (Pa. 2007) (citing A.Y., 641 A.2d at 1150); see also Respond Power LLC, 2015 WL 1291566, at \*1. The ALJ should overrule Sunoco’s hearsay objections for this reason alone.

Even if the ALJ addresses the substance of Sunoco’s hearsay objections, the ALJ should overrule those objections because (1) the remaining exhibits and testimony are not hearsay because they are not offered for the truth of the matter asserted, but instead are offered to show that communications by GRS to Sunoco were made, and (2) the exhibits are otherwise admissible under the business records and/or party opponent admissions exception to the rule against hearsay.

## 1. The Exhibits And Testimony Are Not Hearsay.

Hearsay is an out-of-court statement offered into evidence to prove the truth of the matter asserted therein. Pa. R.E. 801(c). Statements offered for another purpose are not hearsay and are therefore admissible. See Commw. v. Phillips, 879 A.2d 1260, 1262 (Pa. Super. Ct. 2005). When an extrajudicial statement is offered to show that it was made, and not to prove its substance, it is properly admitted as non-hearing evidence. See Commw. v. Griffin, 515 A.2d 865, 870 (Pa. 1986) (holding that out-of-court statements were not hearsay because they were “not being offered for the purpose of proving or demonstrating the truthfulness of the contents of the conversation, but merely the fact that the conversation was had . . .”); see also Commw. v. Rosario, 652 A.2d 354, 357 (Pa. Super. Ct. 1994) (holding that out of court statements offered not for their truth, but to show that they were made, were not hearsay and were properly admitted); In re Fleet, 95 B.R. 319 (E.D. Pa. 1989) (applying F.R.E. 801 and holding that letter from attorney was not hearsay because it was not offered to establish the truth of the matters contained in it, but only to show that it was sent).

Here, as set forth in the chart attached as Exhibit A, the exhibits and related testimony that Sunoco seeks to exclude are not offered to prove the truth of the matters asserted, but are offered to show that communications were made by GRS to Sunoco. [See Enclosed Chart]. Specifically, during his testimony, Mr. Iacobucci described the facts supporting GRS’s concerns over safety hazards created by Sunoco’s work at the property. [Id.]. Mr. Iacobucci then introduced each of the respective exhibits to show that GRS (through its counsel) relayed these safety concerns to Sunoco, which implicates, among other things, 52 Pa. Code § 59.33(a). [Id.]. Accordingly, the exhibits themselves were not offered to prove the matters asserted therein, as Mr. Iacobucci himself testified as to those truths. [Id.]. Instead, the exhibits were offered to demonstrate GRS’s counsel’s



attempts to communicate safety concerns to Sunoco's counsel, which were either completely ignored or not adequately addressed by Sunoco. [*Id.*]. Accordingly, these exhibits and the related testimony are not hearsay and are admissible to prove that Sunoco had notice of GRS's concerns and requests and ignored or failed to properly communicate with GRS and respond to its concerns and questions. See *Griffin*, 515 A.2d at 870; *Rosario*, 652 A.2d 354, 357. Sunoco appears to concede this position in its Motion. [See Sunoco's Motion, p. 6 ("At most, these secondhand hearsay exhibits must be limited to the fact that the communication occurred or that GRS's contentions were made to [Sunoco]... .")]. Accordingly, GRS respectfully requests that the ALJ overrule Sunoco's objections for these reasons.

**2. The Exhibits Are Otherwise Admissible Under The Business Records Exception To The Hearsay Rule.**

Even if the ALJ determines that certain exhibits are hearsay, the communications are admissible under the business records exception to the hearsay rule.

The business records exception to the hearsay rule is set forth in Pa. R.E. 803, which states that the following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

**(6) Records of a Regularly Conducted Activity.** A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if:

(A) the record was made at or near the time by--or from information transmitted by--someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a "business", which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

Pa.R.E. 803(6).

Additionally, the Pennsylvania Uniform Business Records as Evidence Act, 42 Pa. C.S.A.

§ 6108(b) provides as follows:

A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business at or near the time of the act, condition or event, and if, in the opinion of the tribunal, the sources of information, method and time of preparation were such as to justify its admission.

Id.

The business record exception requires the proponent of documentary evidence to establish “circumstantial trustworthiness.” MB Financial Bank v. RAO, 201 A.3d 784, 789 (Pa. Super. Ct. 2018). “In evaluating the trustworthiness of business records, the court will look to the sources of the information therein, method and time of preparation, and the qualifications of the custodial witness.” Sycamore Restaurant Group, LLC. v. Stampfi Hartke Associates, LLC, 174 A.3d 651, 658 (Pa. Super. Ct. 2017). “As long as the authenticating witness can provide sufficient information relating to the preparation and maintenance of the records to justify a presumption of trustworthiness for the business records of a company, a sufficient basis is provided to offset the hearsay character of the evidence.” MB Financial Bank, 201 A.3d at 789; see also Ganster v. Western Pa. Water Co., 504 A.2d 186, 190 (Pa. Super. Ct. 1985) (“It is not essential for the admission of evidence under this rule, however, to produce either the person who made the entries in question or the custodian of the record at the time the entries were made.”); see Lower Makefield

TP. v. Lands of Dalgewicz, 4 A.3d 1114, 11120 (Pa. Commw. Ct. 2010) (holding that letter of intent fell within business records exception of hearsay rule when both parties stipulated to the authenticity of the letter and there “was no evidence that indicated lack of trustworthiness”).

Correspondence sent by counsel on behalf of a client is often admitted under the business records exception to the hearsay rule. See, e.g., Piser v. State Farm Mut. Auto. Ins. Co., 938 N.E.2d 640, 652-53 (Ill. App. Ct. 2010) (holding that demand letters sent by counsel were non-hearsay because they were “offered to show notice and not for the truth of the matter asserted,” but even if they were hearsay, they qualified for admission under the business records exception to hearsay); Tomanelli v. Lizda Realty, Ltd., 174 A.D.2d 889, 890 (N.Y. 1991) (holding letters written by plaintiff’s counsel sent “to defendant in the ordinary course of business were sufficiently established as business documents, thus falling under that exception to the hearsay rule.”).

Here, even if the exhibits were hearsay (which, as discussed above, they are not), they otherwise qualify for admission into evidence under the business record exception. Sunoco has stipulated to the authenticity of these emails and there is, therefore, no dispute that the exhibits are what they purport to be – i.e., email communications exchanged between counsel on the dates depicted in the emails. [See Sunoco Motion, pp. 1-2]. Mr. Iacobucci’s testimony with respect to these exhibits establishes that each of the exhibits qualifies as a business record for purposes of the exception to the rule against hearsay because his testimony establishes that the emails were created at or near the time of events depicted therein. [See Exhibit A]. Further, given that Sunoco stipulates that its counsel received these email communications, there is no genuine dispute that the emails were sent and maintained in the ordinary course of business. Lower Makefield Tp., 4 A.3d at 11120. Accordingly, these exhibits do not present issues of “trustworthiness” and qualify

for admission as business records. See MB Financial Bank, 201 A.3d at 789; see also Ganster, 504 A.2d at 190.<sup>3</sup>

**C. The Exhibits Are All Relevant.**

Sunoco raises relevance objections<sup>4</sup> to GRS-101, 104, 33, 5, 6, and 154 on the basis that they relate to the following topics that are irrelevant to the issues before the Commission: the scope of the temporary easement, zoning matters, Middletown Township ordinances, noise, and alleged hazardous leaks. [See Motion in Limine, pp. 6-7 and at its Attachment A, p. 4.] Sunoco unsuccessfully raised nearly identical objections in its Motion to (1) Enforce the January 28, 2021 Order Granting in Part and Denying in Part Preliminary Objections, (2) to Strike Testimony and (3) Request for Expedited 7-Day Response Period (the “Motion to Strike”). [See Motion to Strike]. Its objections once again fail here.

In its Motion to Strike, Sunoco argued that portions of GRS’s Direct Testimony should be stricken because the Commission lacks the authority to adjudicate the merits and application of the “permanent and temporary easement agreements, various municipals laws, building standards, fire codes, traffic guidelines, noise exposure rules and environmental regulations (including alleged hazardous leaks, storm water management, and air quality).” [Id., ¶ 5]. In denying Sunoco’s request, the ALJ explained that “Section 1501 of the Public Utility Code provides that

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<sup>3</sup> If Sunoco objects to the portion of any exhibit that reflects emails sent by Sunoco’s counsel, Mr. Amerikaner, such emails are admissible as an admission of a party opponent pursuant to Pa. R.E. 803(25). “An attorney may act as an agent for his or her client under Rule 803(25).” City of Scranton v. Pa. Labor Relations Bd., 50 A.3d 774 (Pa. Commw. Ct. 2012); see also U.S. v. Cook, 820 Fed. Appx. 110 (3d Cir. 2020) (“Courts have applied this rule to admit evidence of statements made by attorneys in a representational capacity.”) (citing Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1198 (3d Cir. 1993); see also Neuberger, Quinn, Gielen, Rubin & Gibber, P.A. v. U.S., 183 F. Supp. 3d 752 (W.D. Pa. 2016) (holding, attorney was acting as an agent of his client and, therefore, attorney’s statements were “admissions of a party opponent through its authorized agent and are not hearsay”).

<sup>4</sup> In its Motion in Limine Sunoco also comments that the referenced exhibits are unauthenticated. To the extent that this is a belated attempt to object to the authenticity of these exhibits, Sunoco failed to raise this objection to the ALJ at the time of the hearings (see Motion in Limine at its Attachment A, p. 4), and, as such, it is waived. GRS will not respond to this comment further unless the ALJ would like us to do so.

‘every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities and shall make all such repairs, changes, alternations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees, and the public.’ 66 Pa. C.S. § 1501.” [Order Denying Motion to Strike, p. 6.] The ALJ recognized that GRS is not seeking an adjudication regarding specific agency regulations or contracts, but rather, offers this evidence to demonstrate Sunoco’s failure to operate in a safe manner. [Id., p. 10.] Evidence of community standards, guidelines, and laws are all relevant to the determination of the duty owed by Sunoco here from a safety standpoint. See e.g., 52 Pa. Code § 59.33 (“Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.”). As the ALJ explained “the Commission has jurisdiction to hear [] claims of threats to safety.” [Id.]

Further, GRS-33, GRS-5, and GRS-6, all pertain to the noise dangers at the GRS Property. The parties presented three experts on this subject. [See Sunoco Rebuttal Testimony of Seth Harrison, P.E. (Sunoco Statement No. 8-R); GRS Surrebuttal Testimony of Jason Culp, P.E. (GRS Statement No. 3); GRS Surrebuttal Testimony of Joseph Wittman, P.E. (GRS Statement No. 4)]. This includes Sunoco’s own expert. Sunoco’s suggestion that certain of GRS’s exhibits on this issue should be stricken on the basis of relevance is, frankly, absurd and a waste of resources.

**D. The Exhibits Are Properly Authenticated.**

Sunoco’s objections to GRS-9, 12, 156, 116, 138, 122, and 125 should be overruled because Mr. Iacobucci properly laid a foundation to support the admission of each of the photographs depicted in these exhibits.

To authenticate a photograph, a party must simply offer testimony of a witness “who can confirm that the representation is accurate as to objects depicted, at the relevant time.” Pierce v. Unemployment Comp. Bd. of Review, 641 A.2d 727, 729 (Pa. Commw. Ct. 1994) (holding, “the photographer need not be called if another witness can authenticate the content”); see Rhina Felix v. Amazon.com, No. A14-0356, 2015 WL 12038464, at \*7 (Pa. Work. Comp. App. Bd. Dec. 24, 2015) (admitting videotape over authenticity objection, holding that the video did not need to be authenticated for purposes of an administrative hearing when the video was used for illustrative purposes and was the equivalent to a site visit that the presiding officer could have conducted).

Here, with respect to each of the photographs to which Sunoco now objects, Mr. Iacobucci offered sufficient testimony confirming that the photographs are accurate as to the events depicted therein and during the relevant time period. [See Exhibit A]. Notably, Sunoco had the opportunity to cross-examine Mr. Iacobucci with respect to the substance of these photographs and videos (which GRS produced to Sunoco nearly 4 weeks prior to the hearing), but did not do so. See Noll, 2014 WL 316868, at \*6 (Pa. P.U.C. Jan. 23, 2014) (affirming ALJ’s decision overruling complainant’s objections to exhibits when complainant had the opportunity to cross-examine witnesses about the exhibits at the hearing but did not do so and, instead, raised general objections to the exhibits). Sunoco also introduced photographs during its rebuttal testimony, without identifying who took the photographs or when the photographs were taken. [See Farabaugh Rebuttal, p. 14 ln. 19 – ln. 21 (referring to Sunoco Exhibit CF-5)]. Accordingly, GRS respectfully submits that Sunoco’s last minute objection to these exhibits should be overruled.

**III. CONCLUSION**

For the foregoing reasons, GRS respectfully requests that the ALJ deny Sunoco's Motion *in Limine* and overrule all of Sunoco's objections to Mr. Iacobucci's testimony and related exhibits.

Respectfully submitted,

**FOX ROTHSCHILD LLP**

July 23, 2021

By:



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Samuel W. Cortes, Esquire  
Attorney ID No. 91494  
*Attorneys for Complainant*

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLEN RIDDLE STATION, L.P.,	:	DOCKET NO. C-2020-3023129
Complainant,	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that, on July 23, 2021, I served a true and correct copy of Complainant's Response in Opposition to Sunoco's Motion *In Limine* On Unresolved Hearing Objections upon the persons listed below and by the methods set forth below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

**Email**

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Samuel W. Cortes, Esquire



# EXHIBIT A

<u>Exhibit No.</u>	<u>Sunoco's Objections</u>	<u>Response</u>
GRS-7	Hearsay	<p>Sunoco waived its objections to this document by introducing it during Mr. Amerikaner's direct. [See Amerikaner Direct, p. 9 ln. 6-9 (citing to DA-13, which is the same as GRS-7)].</p> <p>These emails are not offered for the truth of the matters asserted therein but are offered to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci<sup>1</sup> Direct, p. 3 ln. 14-15 ("Exhibits GRS-7 and GRS-101 summarize and illustrate some of these attempts at communication largely ignored by Sunoco.")].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS 101	Hearsay Relevance	<p>These emails are not offered for the truth of the matters asserted therein but are offered to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci Direct, p. 3 ln. 14-15 ("Exhibits GRS-7 and GRS-101 summarize and illustrate some of these attempts at communication largely ignored by Sunoco.")].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p> <p>Further, the emails are relevant for the reasons set forth in GRS's Brief.</p>
GRS-102 and related testimony at Iacobucci Direct p. 4 ln. 3-9.	Hearsay	<p>Sunoco waived its objections to this exhibit by introducing it through Mr. Amerikaner. [See Amerikaner Rebuttal, p. 11 ln. 15-18, p. 14 ln. 1-4 (citing DA-18 and 21, which are the same as GRS-102)].</p>

<sup>1</sup> The references to Iacobucci Direct and Surrebuttal are to Stephen Iacobucci's testimonies.

		<p>Also, these emails are not offered for the truth of the matters asserted therein, but to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci Direct, p. 4, ln. 3-9 (“Our counsel wrote to Sunoco regarding this very serious concern, but was not provided a meaningful response, only argument that if GRS wanted – Sunoco could place the sound walls as close as 5 ft. from the windows of GRS Residents... The communication from our counsel to Sunoco regarding this concern is Exhibit GRS-102.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
<p>GRS-103 and related testimony at Iacobucci Direct p. 5 ln. 3-6.</p>	<p>Hearsay</p>	<p>Sunoco waived its objections to this exhibit by introducing it through Mr. Amerikaner’s testimony. [See Amerikaner Rebuttal, p. 13 ln. 15 – p. 14 ln. 4 (citing DA-19 and DA-20, which are the same as GRS-103)].</p> <p>Also, these emails are not offered for the truth of the matters asserted therein, but to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci Direct, p. 5 ln. 3-6 (“Communications from our counsel to Sunoco’s counsel asking Sunoco to address our safety concerns prior to the start of work on the property are Exhibit GRS-103 and additional communications seeking information about the parking issues are Exhibit GRS-104. Again, Sunoco did not meaningfully respond.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
<p>GRS-104 and related testimony at Iacobucci Direct p. 5 ln. 3-6.</p>	<p>Hearsay Relevancy</p>	<p>Sunoco waived its objections to this exhibit by introducing it through Mr. Amerikaner’s testimony. [See Amerikaner Rebuttal, p. 14 ln. 5-12 (citing to DA-23, which is the same as GRS-104)].</p> <p>Also, these emails are not offered for the truth of the matters asserted therein, but to show that GRS</p>

		<p>communicated parking concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci Direct, p. 5 ln. 3-6 (“Communications from our counsel to Sunoco’s counsel asking Sunoco to address our safety concerns prior to the start of work on the property are Exhibit GRS-103 and additional communications seeking information about the parking issues are Exhibit GRS-104. Again, Sunoco did not meaningfully respond.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p> <p>Finally, the emails are relevant for the reasons set forth in GRS’s Brief.</p>
<p>GRS-105 and related testimony at Iacobucci Direct p. 5 ln. 13-17.</p>	<p>Hearsay</p>	<p>These emails are not offered for the truth of the matters asserted therein but are offered to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci Direct, p. 105 ln. 13-17 (“In addition to some of the specific communication failures set forth below, Exhibits GRS-103, GRS-105, GRS-107, GRS-109, GRS-111, and GRS-112 illustrate general ongoing communication failures by Sunoco.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
<p>GRS-107 and related testimony at Iacobucci Direct p. 5 ln. 13-17.</p>	<p>Hearsay</p>	<p>These emails are not offered for the truth of the matters asserted therein but are offered to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci Direct, p. 105 ln. 13-17 (“In addition to some of the specific communication failures set forth below, Exhibits GRS-103, GRS-105, GRS-107, GRS-109, GRS-111, and GRS-112 illustrate general ongoing communication failures by Sunoco.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco,</p>

		which were created in the ordinary course of business. [See Brief, pp. 8-11].
GRS-109 and related testimony at Iacobucci Direct p. 5 ln. 13-17.	Hearsay	<p>These emails are not offered for the truth of the matters asserted therein but are offered to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci Direct, p. 105 ln. 13-17 (“In addition to some of the specific communication failures set forth below, Exhibits GRS-103, GRS-105, GRS-107, GRS-109, GRS-111, and GRS-112 illustrate general ongoing communication failures by Sunoco.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-111 and related testimony at Iacobucci Direct p. 5 ln. 13-17.	Hearsay	<p>These emails are not offered for the truth of the matters asserted therein but are offered to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci Direct, p. 105 ln. 13-17 (“In addition to some of the specific communication failures set forth below, Exhibits GRS-103, GRS-105, GRS-107, GRS-109, GRS-111, and GRS-112 illustrate general ongoing communication failures by Sunoco.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-112 and related testimony at Iacobucci Direct p. 5 ln. 13-17, p. 9 ln. 5-8.	Hearsay	<p>These emails are not offered for the truth of the matters asserted therein but are offered to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci Direct, p. 105 ln. 13-17 (“In addition to some of the specific communication failures set forth below, Exhibits GRS-103, GRS-105, GRS-107, GRS-109, GRS-111, and GRS-112 illustrate general ongoing communication failures by Sunoco.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco,</p>

		which were created in the ordinary course of business. [See Brief, pp. 8-11].
GRS-113 and related testimony at Iacobucci Direct p. 5 ln. 13-17.	Hearsay	<p>This letter is not offered for the truth of the matters asserted therein but is offered to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [See Iacobucci Direct, p. 5 ln. 13 – 17 (“GRS-113 is a follow-up letter that our counsel sent to counsel for Sunoco following a meeting that we understood was intended to address our safety concerns.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-6 and related testimony at Iacobucci Direct p. 6 ln. 12-18.	Hearsay Relevancy	<p>Mr. Iacobucci introduced this exhibit as follows: “Although GRS Residents frequently voice their concerns verbally, to either GRS Employees or me, Exhibit GRS-6 illustrates some of the GRS Resident complaints that we have received pertaining to noise.” [Iacobucci Direct, p. 6 ln. 17-19]. Accordingly, GRS-6 is not hearsay because it is offered to show that GRS received written complaints from GRS Residents regarding noise generated by Sunoco’s work at the property.</p> <p>Additionally, GRS-6 are emails and text messages from GRS Residents, which are maintained by GRS in the ordinary course of business and they, therefore, qualify as business records.</p> <p>Finally, any suggestion by Sunoco that GRS was required to call as a witness every GRS Resident who has submitted a complaint regarding Sunoco’s activities at the Property is overly burdensome and not in keeping with the streamlined procedures applied to administrative hearings. See 52 Pa. Code § 5.403 (stating, the presiding officer shall have all necessary authority to control the receipt of evidence, including, limiting the number of witnesses to be heard, to direct and focus the proceedings consistent with due process).</p>
GRS-110 and related testimony at	Hearsay	This email is not offered for the truth of the matters asserted therein but is offered to show that GRS attempted to obtain cooperation from Sunoco after traffic blockages caused an

<p>Iacobucci Direct p. 9 ln. 3-5.</p>		<p>emergency to be unable to access the Property. [See Iacobucci Direct, p. 9 ln. 3-8 (“Exhibit GRS-110 illustrates our counsel’s efforts to obtain cooperation from Sunoco after the blockages caused an emergency to be unable to access the Property and other emergency vehicles to struggle to access the Property.”)].</p> <p>Even if, however, the communication constituted hearsay, it is subject to the business record exception because it is an email between counsel for GRS and Sunoco, which was created in the ordinary course of business. [See Brief, pp. 8-11].</p>
<p>GRS-11 and related testimony at p. 9 ln. 9-10.</p>	<p>Hearsay</p>	<p>These emails are not offered for the truth of the matters asserted therein but are offered to show that GRS attempted to obtain cooperation from Sunoco after traffic blockages caused an emergency to be unable to access the Property. [See Iacobucci Direct, p. 9 ln. 9-10 (“Exhibit GRS-11 illustrates this blockage and our counsel’s attempt to obtain information regarding the same.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
<p>GRS-108 and related testimony at p. 9 ln. 20-23.</p>	<p>Hearsay</p>	<p>These emails are not offered for the truth of the matters asserted therein, but are offered to show that GRS attempted, unsuccessfully, to obtain information from Sunoco’s counsel regarding school bus access to the Property, to which GRS did not receive a meaningful response. [See Iacobucci Direct, p. 9 ln. 20-22 (“Exhibit GRS-108 illustrates our counsel’s efforts to obtain information from counsel for Sunoco on this issue. GRS’s counsel did not receive any meaningful response to its communication.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>

GRS-106	Hearsay	<p>These communications are not offered for the truth of the matters asserted therein but are offered to show that Sunoco failed to respond substantively to GRS’s request for information relating to a leak at the property. [See Iacobucci Direct, p. 12 ln. 3 (“Exhibit GRS-106 demonstrates the communications on this issue.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-158	Hearsay	<p>Sunoco waived its objections to this October 27, 2020 letter by introducing it during Mr. Amerikaner’s rebuttal testimony. [See Amerikaner Rebuttal, p. 8 ln. 1-23].</p> <p>Further, the letter is not offered for the truth of the matter asserted, but to show that GRS communicated safety concerns to Sunoco, which were not addressed by Sunoco. [Iacobucci Surrebuttal, p. 28 ln. 18-20 (“As set forth in Mr. Amerikaner’s own testimony – Sunoco’s only response was regarding the Vibra-Tech Structural Inspection [Amerikaner, p. 9 ln. 1-9]. The referenced email is attached as Exhibit GRS-158.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-159	Hearsay	<p>This email is not offered for the truth of the matter asserted, but to show that Sunoco communicated safety concerns to Sunoco, which Sunoco failed to address. [Iacobucci Surrebuttal, p. 28 ln. 20-23 (“Again, on October 29, 2020, counsel for GRS followed up with a series of detailed questions pertaining to the safety of the work site including, without limitation, questions regarding a site plan, details concerning the sound walls, site access, emergency repair of utilities, fire/medical emergencies that may require fire truck access, how existing utilities will be supported or replaced if damaged, the fire safety of the plan and barriers relating to access, dust control, and E&amp;S</p>



		<p>control. [Exhibit GRS-159]. Again, no meaningful response came from Sunoco.”].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-160	Hearsay	<p>Sunoco waived its objections to this October 16, 2020 email from Mr. Amerikaner by introducing it during Mr. Amerikaner’s rebuttal. [Amerikaner Rebuttal, p. 7 ln. 3-7 (“[A]fter speaking with Sunoco Pipeline, I sent an email to GRS Counsel on October 16, 2020 with responses to the requests and questions in the October 5, 2020 email from GRS Counsel. See Exhibit DA-10.”)]. [See also DRS-8-10, which are the same as GRS-160].</p> <p>The email also qualifies as an admission by a party opponent and a business record. [See Brief, pp. 8-11].</p>
GRS-161	Hearsay	<p>Sunoco waived its objections to this November 20, 2020 letter by introducing it during Mr. Amerikaner’s rebuttal. [See Amerikaner Rebuttal, p. 14 ln. 13-18 (“I received a letter from GRS Counsel on November 20, 2020 that contained a list of 211 questions, some with multiple sub-parts purporting to follow up on the Pre-Construction Meeting...See Exhibit DA-24 [the same letter as GRS-161.”)].</p> <p>This letter is also not hearsay because it is offered to show that GRS communicated safety concerns to Sunoco, which Sunoco failed to respond. [Iacobucci Surrebuttal, p. 29 ln. 7-17 (“The letter attached as Exhibit GRS-161 illustrates GRS’s ongoing concerns...Contrary to Mr. Amerikaner’s testimony, as I testified above, Sunoco failed to provide substantive information pertaining to its plans for the safety of the GRS Residents.”)].</p> <p>Even if the letter constitutes hearsay, it is subject to the business record exception because it is a letter exchanged between counsel for GRS and Sunoco, which was created in the ordinary course of business</p>
GRS-166	Hearsay	<p>This letter is not offered for the truth of the matter asserted but rather to show that GRS communicated safety concerns</p>

		<p>to Sunoco, which Sunoco failed to address. [Iacobucci Surrebuttal, p. 31 ln. 20-3 (“Following the Zoom meeting, counsel for GRS sent the letter attached as Exhibit GRS-166 setting for additional concerns...”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-151	Hearsay	<p>Sunoco waived its objections to this exhibit by “opening the door” and making claims that GRS accused Sunoco of trespassing when it was attempting to take sound readings. [Becker Rebuttal, p. 13 ln. 2-ln. 11]. GRS is permitted to introduce this exhibit to dispel any “unfair inference” from Mr. Becker’s testimony. [See Brief, p. ____].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-126	Hearsay	<p>This letter is not hearsay because it is not offered for the truth of the matter asserted but to show that GRS’s counsel wrote to Sunoco’s counsel regarding a traffic incident, to which Sunoco failed to adequately respond. [Iacobucci Surrebuttal, p. 23 ln. 5-10 (“A letter from GRS Counsel to Counsel for Sunoco memorializing this incident is attached as Exhibit GRS-126.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-128	Hearsay	<p>Sunoco waived its objection to this exhibit by “opening the door” through Mr. Fye’s testimony that Sunoco works with Michels’ environmental team “to address and resolve stormwater issues and is in compliance with all applicable permits.” [Fye Rebuttal, p. 16 ln. 22-23]. This exhibit is offered directly to rebut Mr. Fye’s testimony. [Iacobucci Rebuttal, p. 25 ln. 16 – 20].</p>

		<p>Additionally, the email communications are not hearsay because they are not offered for the truth of the matter asserted but to confirm that GRS communicated with Sunoco regarding stormwater issues, which concerns were not adequately addressed by Sunoco. [Iacobucci Rebuttal, p. 25 ln. 18-20].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-162-165	Hearsay	<p>Sunoco waived its objections to these exhibits by “opening the door” and claiming that GRS “attempted to link monetary settlement with the filing before the PUC.” [See Becker Rebuttal p. 7 ln. 9-19; Amerikaner Rebuttal, p. 17 ln. 4 – p. 19 ln. 19]. GRS has the right to respond to these false accusations by introducing these exhibits, which are the actual emails exchanged between Sunoco and GRS that Sunoco attempts to mischaracterize. [See Iacobucci Surrebuttal, p. 29 ln. 18 – p. 30 ln. 20].</p> <p>The emails also are not hearsay because they are not offered for the truth of the matter asserted but to show that Sunoco failed to respond to GRS’s requests for information. [See Iacobucci Surrebuttal, p. 30 ln. 19-20 (“Counsel for GRS continued to obtain information regarding Sunoco’s work plan, and its failed communication with GRS and the GRS Residents.”)].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-133	Hearsay	<p>This letter contains statements made by Sunoco regarding rent relief, which are admissions of a party opponent and are excluded from the rule against hearsay.</p> <p>This letter is also a business record because it is a letter from GRS’s counsel to Sunoco’s counsel, which was created in the ordinary course of business.</p>

GRS-135	Hearsay	<p>These emails are not hearsay because they are not offered for the truth of the matter asserted but to show that GRS communicated concerns over a calciment release to Sunoco, which was not adequately addressed by Sunoco. [Iacobucci Rebuttal, p. 32 ln. 12-22].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-139	Hearsay	<p>These emails are not hearsay because they are not offered for the truth of the matter asserted but to show that GRS communicated concerns over water safety to Sunoco, which Sunoco failed to address. [Iacobucci Surrebuttal, p. 34 ln. 20 – p. 36 ln. 8].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-150	Hearsay	<p>This is a letter from GRS counsel seeking basic safety information regarding the water break at the GRS property, which is not offered for the truth of the matter asserted but to show that Sunoco did not respond. [Iacobucci Surrebuttal, p. 36 ln. 1-8].</p> <p>Even if, however, the communications constituted hearsay, they are subject to the business record exception because they are emails between counsel for GRS and Sunoco, which were created in the ordinary course of business. [See Brief, pp. 8-11].</p>
GRS-33	Relevance	<p>Sunoco waived its objections to this exhibit by discussing it during Mr. Harrison’s testimony. [See Mr. Harrison Rebuttal, p. 7 ln. 1-11].</p> <p>Additionally, this exhibit is relevant for the reasons set forth in GRS’s Brief.</p>
GRS-5	Relevance	<p>Sunoco waived its objections to this exhibit by discussing it during Mr. Harrison’s testimony. [See Harrison Rebuttal, pp. 6 ln. 5-p. 8 ln. 4].</p>

		Additionally, this exhibit is relevant for the reasons set forth in GRS’s Brief.
GRS-154	Relevance	This exhibit is relevant for the reasons set forth in GRS’s Brief.
GRS-9 and related testimony at Iacobucci Direct p. 7 ln. 12-21	Authentication of Substance	<p>During his direct, Mr. Iacobucci testified that due to vibration from Sunoco’s work, “GRS has experienced walls and ceilings cracking in several of the residential units....GRS-9 illustrates the cracking in the residential buildings on the Property.” [Iacobucci Direct, p. 7 ln. 11-21].</p> <p>Accordingly, GRS-9 is properly authenticated because Mr. Iacobucci’s testimony confirms that GRS-9 accurately depicts the cracking issues to which Mr. Iacobucci testified.</p> <p>Additionally, the testimony at page 7 ln. 12-21 of Mr. Iacobucci’s Direct Testimony introduces GRS-8 and GRS-26. Sunoco failed to object to GRS-8 and GRS-26 and, therefore, waives any objection to this related testimony.</p> <p>Finally, any suggestion by Sunoco that GRS was required to call as a witness every GRS Resident who has submitted a complaint regarding Sunoco’s activities at the Property is overly burdensome and not in keeping with the streamlined procedures applied to administrative hearings. <u>See</u> 52 Pa. Code § 5.403 (stating, the presiding officer shall have all necessary authority to control the receipt of evidence, including, limiting the number of witnesses to be heard, to direct and focus the proceedings consistent with due process).</p>
GRS-12	Authentication of Substance	<p>During his direct, Mr. Iacobucci testified that “[d]ue to the layout of Sunoco’s work in the parking lot at GRS, school buses have been obstructed, at times, from having safe access to the Property. This has resulted in situations where children have not had an appropriate and safe place to wait for the school bus and be dropped off by the school bus. Exhibit GRS-12 illustrates this school bus access issue.” [Iacobucci Direct, p. 9 ln. 11-15].</p> <p>Accordingly, GRS-12 is properly authenticated because Mr. Iacobucci’s testimony confirms that GRS-12 is an</p>

		accurate representation of the school bus access issues to which Mr. Iacobucci testified.
GRS-156	Authentication of Substance	<p>During surrebuttal, Mr. Iacobucci testified: “I regularly observe activity at the Property and receive regular reports from GRS personnel working at the Property....Notably, I have observed Sunoco’s employees in the work area without PPE.” [Iacobucci Surrebuttal, p. 3 ln. 2-15 (citing GRS-156)].</p> <p>Accordingly, GRS-156 is properly authenticated because Mr. Iacobucci’s testimony confirms that GRS-156 accurately depicts Sunoco’s employees not wearing PPE.</p>
GRS-116	Authentication of Substance	<p>With respect to this exhibit, Mr. Iacobucci testified: “After GRS’s submission of complaints concerning the Parking Lot Dangers to the PUC, and as the hearing approached, Sunoco had on site individuals that it claimed were ‘flaggers.’ Sunoco’s ‘flaggers,’ however, appeared to “work” only for theatrical purposes when filmed by Sunoco, presumably for use at the PUC hearing to show purported safety efforts. The safety efforts, however, are fiction and the traffic has continued, dangerously and unregulated. Exhibits GRS-116 and GRS-119 [notably, Sunoco did not object to GRS-119, which are additional and related videos] show additional unsafe driving conditions and flagger failures in March 2021.” [Iacobucci Surrebuttal, p. 23 ln. 21 – p. 24 ln. 4].</p> <p>Accordingly, GRS-116 is properly authenticated because Mr. Iacobucci’s testimony confirms that the videos accurately depict unsafe driving condition and flagger failures taken in March 2021.</p>
GRS-138	Authentication of Substance	<p>With respect to this exhibit, Mr. Iacobucci testified, “[O]n March 24, 2021, I emailed Joseph McGinn about truck stacking and unsafe congestion attaching videos taken by GRS employees who report to me of this activity and received no response. [Exhibit GRS-119]. I did not receive a response from Mr. McGinn. Video taken <b>on that date depicting what I observed of the traffic issues</b> are attached as Exhibit GRS-138.” [Iacobucci Surrebuttal, p. 6 ln. 7-14 (emphasis added)].</p> <p>Accordingly, GRS-138 is properly authenticated because Mr. Iacobucci’s testimony confirms that the video</p>

		accurately depicts the traffic issues to which he testified and observed at the property on March 24, 2021.
GRS-122 and related testimony at Iacobucci Surrebuttal p. 17 ln. 3-5	Authentication of Substance	<p>In response to testimony offered by Sunoco’s witnesses regarding structural damage caused by vibrations from Sunoco’s construction at the property, Mr. Iacobucci testified that “GRS has observed cracking in various places in residential structures and GRS Residents have reported disturbances in their apartments. GRS expert witnesses Jason Culp, P.E., and Joseph Wittman, P.E., discuss GRS’s vibration evaluation. Additionally, GRS Residents have sent us videos and photographs of vibration and damage to their apartments.” [Iacobucci Surrebuttal, p. 16 ln. 17 – p. 17 ln. 5].</p> <p>Accordingly, GRS-122 is properly authenticated because Mr. Iacobucci’s testimony confirms that the videos and photographs sent by GRS Residents accurately depict the vibration and resulting damage at the property.</p> <p>Additionally, Sunoco waived any hearsay objection to the related testimony at Iacobucci Surrebuttal, p. 17 ln. 3-5, which simply introduces GRS-122, by not objecting on the basis of hearsay to GRS-122.</p>
GRS-125	Authentication of Substance	<p>With respect to this exhibit, Mr. Iacobucci testified that “[GRS] also had to order and post our own signage to keep GRS Residents safe from Sunoco trucks that routinely trespass into GRS parking lots.” [Iacobucci Surrebuttal, p. 23 ln. 3-5 (citing Exhibit GRS-125)].</p> <p>Accordingly, GRS-125 is properly authenticated because Mr. Iacobucci’s testimony confirms that the photograph accurately depicts the signage posted by Sunoco.</p>
Iacobucci Direct, p. 8 ln. 21-23, p. 9 ln. 16-19.	Hearsay	<p>This testimony introduces GRS-23. Sunoco failed to object to GRS-23 and, therefore, waives any objection to this related testimony.</p> <p>Further, any suggestion by Sunoco that GRS was required to call as a witness every GRS Resident who has submitted a complaint regarding Sunoco’s activities at the Property is overly burdensome and not in keeping with the streamlined procedures applied to administrative hearings. <u>See</u> 52 Pa. Code § 5.403 (stating, the presiding officer shall have all necessary authority to control the receipt of evidence,</p>

		including, limiting the number of witnesses to be heard, to direct and focus the proceedings consistent with due process).
Iacobucci Direct, p. 10 ln. 14-15	Hearsay	This testimony follows: "...residents, including the Property's elderly residents who face additional difficulties in traversing around these hazards. On Friday, November 27, 2020, Sunoco left hazardous...." This testimony does not, in any way, contain any form of hearsay.
Iacobucci Direct, p. 14 ln. 14-16	Hearsay	This testimony introduces GRS-24, GRS-25, and GRS-26. Sunoco failed to object to these exhibits and, therefore, waived any objection to the testimony introducing these exhibits.  Further, any suggestion by Sunoco that GRS was required to call as a witness every GRS Resident who has raised a concern regarding Sunoco's activities at the Property is overly burdensome and not in keeping with the streamlined procedures applied to administrative hearings. <u>See</u> 52 Pa. Code § 5.403 (stating, the presiding officer shall have all necessary authority to control the receipt of evidence, including, limiting the number of witnesses to be heard, to direct and focus the proceedings consistent with due process).
Iacobucci Direct, p. 7 ln. 9-8 [sic]	Hearsay	Sunoco's characterization of this testimony is inaccurate, as this testimony is not "referencing Turnbridge communications." By way of further response, please see GRS's response to Sunoco's objections to "Iacobucci Direct, p. 7 ln. 12-21" set forth above.
Iacobucci Surrebuttal, p. 14 ln. 1-10, ln. 17-19	Hearsay	These statements are not offered for the truth of the matter asserted therein, but to show that GRS received complaints and concerns from residents, which GRS then passed on to Sunoco and that Sunoco did not adequately respond.  Further, any suggestion by Sunoco that GRS was required to call as a witness every GRS Resident who has raised a concern regarding Sunoco's activities at the Property is overly burdensome and not in keeping with the streamlined procedures applied to administrative hearings. <u>See</u> 52 Pa. Code § 5.403 (stating, the presiding officer shall have all necessary authority to control the receipt of evidence, including, limiting the number of witnesses to be heard, to



		direct and focus the proceedings consistent with due process).
Iacobucci Surrebuttal, p. 16 ln. 5-6	Hearsay	This testimony, which states “Sunoco failed to adequately mark the school bus stops, making it extremely difficult for GRS Residents to navigate the changes resulting from Sunoco’s work on the Property,” is not hearsay because there is no out-of-court statement contained within this testimony.
Iacobucci Surrebuttal, p. 23 ln. 19-20	Hearsay	This testimony, which states “Additionally, GRS security had to intervene when a Sunoco truck was driving dangerously while an elderly GRS Resident was crossing the parking lot,” is not hearsay because there is no out-of-court statement contained within this testimony.
Iacobucci Surrebuttal, p. 36 ln. 7-8.	Hearsay	This testimony simply introduces GRS-153. Sunoco failed to object to GRS-153 and, therefore, waived any objection to the testimony introducing this exhibit.
Iacobucci Surrebuttal, p. 37 ln. 9-11	Hearsay	This testimony simply introduces GRS-145. Sunoco failed to object to GRS-145 and, therefore, waived any objection to the testimony introducing this exhibit.